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***Has Governance Eclipsed Government?
The Rise Of 'New' Policy Instruments
In Comparative Perspective***

by

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Abstract

Governance is a concept in good currency, but there are few detailed empirical analyses of the precise extent to which governance has or has not eclipsed government. This paper explores the temporal and spatial characteristics of the governance transition by charting the deployment of new policy instruments in eight industrialised states and the European Union (EU). It argues that the adoption and implementation of ('old' and 'new') policy instruments offers a useful analytical touchstone because governance theory regards traditional regulation as being the very quintessence of government. Particular attention is paid to recent trends in environmental policy, because it has traditionally exhibited a relatively strong emphasis on regulation. Although there are many 'new' environmental policy instruments (NEPIs) in these nine jurisdictions, this paper finds that the overall pattern of change from government to governance is highly differentiated across sectors, across political jurisdictions and even across the main instrument types. Crucially, many of the new instruments used require some state involvement (i.e. 'government') and very few are entirely devoid of state involvement (i.e. pure 'governance'). Far from eclipsing government, governance therefore often complements it, and on some occasions even competes with it. Future research on governance should explore the many complex and varied ways in which (environmental) government and governance interact in public policy making.

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Introduction¹

Academia is awash with neologisms, none more pervasive, or as apparently important, as that of 'governance'. In 1998, Stoker (1998: 18) claimed that it provides a new 'reference point which challenges many of the assumptions of traditional public administration'. Even critics openly concede that it has achieved a "paradigmatic orthodoxy" in British political science (Marinetto 2003: 597). The interest in governance is, of course, by no means limited to Britain. In 2000, the European Commission began to draft a White Paper on the governance of Europe, but scholars of the European Union (EU) had already defined a 'new governance' research agenda (Hix 1998) long before it was actually published. For van Kersbergen and van Waarden (2004: 144), '[t]he study of governance has become a veritable growth industry.'

In spite of its widespread use, doubts have been expressed about whether such a broad term can be fashioned into a coherent and cumulative research programme (Marinetto 2003). To be fair, the governance 'turn' has generated much theorising, but there is still surprisingly little detailed comparative empirical work. There is a growing appreciation of the need for such work (Eberlein and Kerwer 2004: 122, 136; van Kersbergen and van Waarden 2004: 165; Kooiman, 2003: 4-5; Marinetto, 2003: 605-6). It will, Flinders (2002: 55) argues, 'allow analysts to more completely comprehend the response and capacity of nation states to govern in a more globalized and networked environment.' It could also help to arbitrate between some of the more extreme claims made about the extent and/or timing of governance. Thus, drawing on a considerable body of work on British government, Rhodes (1996: 652-3) claims that governance is synonymous with 'a *change* in the meaning of government; a *new* process of governing; or a *changed* condition of ordered rule; or the *new* method by which society is governed' (emphasis added). By contrast, Pierre (2000: 5) argues that government lives on in the era of governance, but its form and function are different to what they once were (see also Mayntz and Scharpf 1995).

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If analysts want to research governance empirically, the most obvious place to start is with a baseline definition. However, there is, as yet, no universally accepted definition of governance; there is not even a “consensus on which set of phenomena can properly be grouped under the title of ‘governance’” (van Kersbergen and van Waarden 2004: 165). Hirst (2000), for example, offers five different interpretations, Rhodes (1996) identifies six, and Kersbergen and van Waarden (2004) manage to locate no less than nine. Kooiman (2003: 5) understandably concludes that ‘[w]e are still in a period of creative disorder concerning governance.’

Our main aim in this paper is not to explore, let alone empirically assess, all these definitions and interpretations, but simply to introduce a little more ‘creative order’ into the debate by identifying what most differentiates governance from government and subjecting that to more detailed empirical analysis. Two authorities on governance have recently argued that it may not be useful to search for an ‘empirical measuring stick’ (Eberlein and Kerwer 2004: 127). After all, the popularity of the term derives from “its capacity – unlike that of the narrower term ‘government’ – to cover the whole range of institutions and relationships involved in the process of governing” (Pierre and Peters 2000: 1). But somehow, those seeking to examine governance empirically have to find a means of retaining this conceptual breadth, while at the same time gaining sufficient analytical precision. After all, greater clarity is an important pre-condition for more detailed comparative work that analyses patterns of governance across sectors, across political jurisdictions and across time.

In this paper we scour the theoretical literature to identify a simple yardstick or touchstone of governance i.e. a relatively simple analytical device that might allow scholars to distinguish governance from government. We argue that an obvious touchstone is to be found in the way that political jurisdictions select and deploy different policy instruments to achieve their policy goals. Leading advocates of a governance perspective argue that a focus on policy instruments usefully highlights the difference between what the state (i.e. government) seeks to achieve (i.e. policy objectives) and the means at its disposal (i.e. the

policy instruments) to achieve them. In their illuminating analysis of British governance, Richards and Smith (2002: 279), conclude that it 'is not what the state does that is different, but *how* it does it' (emphasis added). That is to say, while policy goals have stayed the same, the 'way they [instruments] are used and the use of different forms of control have changed the way the state operates' (*ibid.*).

To summarise, if there is such a thing as 'governance', it should show up in the way that states select and implement their policy instruments. Drawing on the governance literature, we argue that the very quintessence of government is the deployment of so-called 'command-and-control' (Helfand and Berck 2003) regulatory policy instruments. By contrast, governance is characterised by the appearance of new, or what are sometimes referred to as 'softer' instruments, which allow social actors to steer themselves (i.e. through a process of self-regulation), with central government playing a much less dominant role (for more details see Jordan *et al.* 2003b; Rengeling and Hof 2001). Policy instruments are by no means the only touchstone we could have used (e.g. Andeweg 2003), but they are, as we shall show below, widely referred to in the theoretical literature, and their deployment is relatively straightforward to track across time and space. We analyse the overall pattern of change in the European Union (EU)² and seven of its member states, namely Austria, Finland, France, Germany, Ireland, the Netherlands and the UK. By also adding Australia to our sample, we hope to assess whether the same dynamics of change are present within a broadly comparable, non-EU state.

We have elected to focus our analysis on the environmental policy sector because it is inherently *regulatory* in nature (Weale 1992), although regulation inevitably has distributive and redistributive consequences. We shall show that regulation was the preferred tool of environmental policy in all nine jurisdictions in the early 1970s, but that 'new' tools of environmental governance have undoubtedly becoming much more common. Environment policy represents an

² That is to say, the NEPIs that are formally part of the EU's environmental *acquis communautaire*, rather than those adopted by EU member states as part of their own national environmental policies.

interesting or 'critical' case in which to examine empirically how this apparent shift to governance is playing out. It is not, after all, a sector in which we would expect new instruments to flourish. On the contrary, the strong legacy of government by regulation would make any widespread and consistent shift to new environmental policy instruments (NEPIs) (i.e. governance) all the more significant. By contrast, if the adoption and implementation of NEPIs in these jurisdictions is not (uniformly) widespread, then perhaps governance is not as common or as novel as some analysts claim. As there is already a rich literature which explores the main drivers of NEPI use (Golub 1998; Knill and Lenschow 2000; Rengeling and Hof 2001), we mainly focus on the main patterns of uptake and reflect upon what these tell us about the contours and pacing of any transition to governance.

The remainder of this contribution is structured as follows. Part Two explores some of the different definitions of the terms 'governance' and 'government', and emphasises the most important areas of (dis)agreement. In Part Three, we very briefly define what we mean by NEPIs. In Part Four we make a preliminary attempt to measure the amount of governance by relating these to the traditional tools of policy (i.e. regulation) using a simple typology. In Part Five, we document the overall pattern of instrument use in the nine jurisdictions throughout the period of modern environmental policy (i.e. since c.1970). Finally, Parts Six and Seven draw together the main threads of our argument and identify what lessons can be drawn from our study for the governance debate in the political sciences.

On Government and Governance

Governance is by no means an entirely new term (Pierre and Peters 2000: 2), but its popularity has undoubtedly grown in the last decade or so. According to the Shorter Oxford English Dictionary, 'to govern' means to guide, direct or steer society. Governance has been similarly defined as 'the various ways through which social life is coordinated' (Heywood 2000: 19). Political scientists have traditionally used governance as a synonym for government (Stoker 1998: 17), but nowadays they are regarded as being analytically distinct terms.

However, if we move beyond this set of broad definitions, it becomes apparent that different branches of the social sciences sometimes define governance in significantly different ways. In fact, different branches of the political sciences use it rather differently. For instance, scholars of international relations tend to be more interested in the international drivers and manifestations of governance in a global society that has never experienced world government (Rosenau 1992: 8-9). By contrast, those studying national policy systems from a comparative politics perspective are normally preoccupied with understanding what governance implies for the internal attributes and functions of 'the state' qua government. Significantly, for those seeking to undertake more detailed, comparative empirical work, none of the broad interpretations identified above is precise enough to measure how much governance exists in a given political system, relative to government.

In order to overcome this definitional problem, in this paper we try to focus on what most strongly differentiates governance from government, and subject that to more detailed empirical analysis (c.f. Eberlein and Kerwer 2004).³ There are a number of points upon which where there is widespread (but admittedly not unanimous) agreement. First and foremost, most scholars of governance associate it with a decline in central governments' ability to steer society. According to Stoker (1998: 17), governance refers to the emergence of 'governing styles in which the boundaries between and within public and private sectors have blurred.' Pierre and Peters (2000: 83-91) contend that the state is losing its steering ability as control is displaced: upwards to regional and international organisations such as the EU; downwards to regions and devolved localities; and outwards to international corporations, NGOs and other private or quasi private bodies.

Second, there is widespread agreement that governance is sufficiently common and widespread to warrant further research. Stoker (1998: 26) claims that governance marks a 'substantial break from the past.' Rhodes (1997: 47)

³ Eberlein and Kerwer (2004, 127) doubt whether it is possible to identify an "empirical measuring stick", but then concede the need for "future empirical inquiry."

argues that it provides a new 'operating code' for British government. Other commentators are much less assertive in their claims (see above), but while the precise importance of governance is often left tantalisingly undefined, in most accounts its importance is nonetheless implied.

Third, governance and government are not normally regarded as discrete entities, but two poles on a continuum of different governing types (Finer: 1970). If the extreme form of government was the 'strong state' in the era of 'big government' (Pierre and Peters 2000: 25), then the equally extreme form of governance is an essentially self governing network of societal actors. Crucially, such networks are said to 'involve not just influencing government policy but taking over the business of government' (Stoker 1998: 23). To quote one well-known authority on governance, they are 'self-organizing' in the sense that they actively resist government steering (Rhodes, 2000: 61). To use Osborne and Gaebler's (1992) popular distinction between 'steering' (setting policy goals) and 'rowing' (delivering those goals), they 'steer' as well as 'row'.

Merely placing government and governance at the opposite ends of a theoretical continuum of different governing types does not actually guide empirical research particularly well. It certainly does not reveal what (if anything) occurs between the two extremes. So, in what ways might governance and government interact along this continuum? Drawing on Eberlein and Kerwer (2004: 136), there are at least four possible forms of interaction: they could *complement* one another without actually merging; they could *merge* with one another; they could *compete* and conflict with one another; or one could eclipse or actively *supplant* one another. For the sake of convenience we label these four potential forms of interaction *co-existence*, *fusion*, *competition* and *replacement* respectively.

We seek to map and better understand these interactions by focusing on the fourth and final area of common agreement in the literature i.e. the *instruments* of governance. We have already noted the strong tendency to associate government with regulation, whereas governance is manifest in the appearance of so-called 'new' instruments (Zito *et al.* 2003). Heywood (2000: 19), for

example, regards the ability to ‘make law (legislation), implement law (execution) and interpret law (adjudication)’ as the ‘core functions’ of government. For Richards and Smith (2002: 279): ‘government *is* bureaucracy, legislation, financial control, regulation and force’ (emphasis added). Governance, by contrast, is characterised by a growing use of non-regulatory policy instruments such as NEPIs, which are proposed, designed and implemented by non-state actors, sometimes working together with state actors and sometimes apart from them.

There is surprisingly strong measure of agreement on this fourth and final point. Thus, international relations theorists such as Rosenau (1992: 4) claim that governance equates to policy ‘goals that may or may not derive from legal and formally prescribed responsibilities and do not necessarily rely on police powers to overcome defiance and attain compliance.’ Meanwhile, those taking a more domestic politics perspective such as Stoker (1998: 17), often claim that the very ‘*essence of governance is its focus on governing mechanisms which do not rest on recourse to the authority and sanctions of government*’ (emphasis added).

Governance by ‘New’ Policy Instruments

Having identified our analytical touchstone and described some of the possible forms of interaction, we now look more closely at the form and function of policy instruments. These have been broadly defined as the ‘myriad techniques at the disposal of governments to implement their policy objectives’ (Howlett 1991: 2). There are many types of ‘new’ policy instrument described in the literature, including benchmarking, co-regulation, voluntary codes of conduct and negotiated agreements (Zito *et al.* 2003: 509). The environmental policy literature distinguishes between regulatory tools, which have been the mainstay of environmental policy going back as far as the late 1960s (see above), and ‘newer’ tools of environmental policy, or NEPIs (Knill and Lenschow 2000; Jordan *et al.* 2003a). In our analysis, we concentrate on four main sub-types of NEPI, namely market-based instruments (MBIs), eco-labels, environmental management systems (EMS) and voluntary agreements (VAs), pointing to the

substantial overlap in the way that they are applied by different commentators. In the remainder of this section, we define these sub-types in general terms using categories adopted by various international bodies such as the EU and the OECD, before discussing how far they are representative of 'governance'.

Market Based Instruments

MBIs 'affect estimates of costs of alternative actions open to economic agents' (OECD 1994: 17). Economists believe that MBIs use the power of the market to internalise the cost of polluting activities in a more cost-efficient manner than regulation. International databases show that the total number of MBIs used in OECD countries has grown strongly since the early 1970s. So too has the diversity of sub-types, which now extends from subsidies through to eco-taxes and tradable permits (OECD 1998). The OECD distinguishes between four main types of MBI: eco-taxes (including charges and levies); tradable permits; subsidies (including fiscal incentives for less polluting products and/or activities); and deposit-refund schemes. Because of space constraints, in our analysis we only focus on eco-taxes and tradable permits.

Eco-Labels

Eco-labels mainly rely on moral suasion by providing consumers with more information about the environmental impact of particular products and services. The OECD differentiates between three subtypes: externally verified, multi issue schemes (Type I); unverified self-declaratory schemes (Type II); and single issue schemes (Type III). In comparison to regulation and also some MBIs, eco-labels do not directly steer society; they simply provide information to consumers in a standardised manner, allowing them to make more informed purchasing decisions. In markets where green consumerism is very strong, widely recognized and supported eco-labels may influence producers in much the same way as traditional regulatory standards (OECD 1999). However, in markets which are characterized by a much lower level of environmental awareness, producers will be under much less market 'compulsion' to seek a label for their products and services.

Environmental Management Systems

In theory, EMSs such as the EU's environmental management and audit system (EMAS) and the international standard organisations (ISO) ISO 14001 are supposed to encourage industry to behave in a more environmentally responsible manner. Although the precise characteristics of these two systems differ, both require companies to audit the environmental impact of their activities, establish internal management systems to monitor and where possible reduce these impacts, and provide stakeholders with a regular statement of their activities. In exchange, the business in question is granted an official confirmation (or logo) by a competent national authority (as in the case of EMAS) or the ISO (as in the case of ISO 14001), which they are entitled to use in their environmental statements and/or products. Although participation in both schemes is voluntary, firms are often driven to participate by market pressures. Another, more active way in which policy makers may encourage participation is by linking membership to a slightly lighter regulatory regime.

Voluntary Agreements

The first VAs appeared in Japan in the 1960s, but there is still no agreed definition of what they actually are. The European Commission has adopted the following generic definition: 'agreements between industry and public authorities on the achievement of environmental objectives' (CEC 1996: 5). We, however, shall use the more specific typology of sub-types developed by Börkey and Lévèque (1998) for the OECD: negotiated agreements; public voluntary schemes; and unilateral commitments. *Negotiated agreements* are formal contracts negotiated between industry and public authorities, whose aim is often to address quite specific environmental problems (e.g. the emission of a certain type of pollutant). They may or may not be legally binding, but normally their contents are revealed to the public. *Public voluntary schemes* (PVS) are normally established by public bodies like the ISO and the EU, which define certain performance criteria and other conditions of membership. For

our purposes, we have already discussed the main type of PVS (i.e. EMS).⁴ Because of space constraints, we do not say much about *unilateral commitments* (although their use is relatively widespread in Austria and Germany), which consist of more general environmental improvement statements and programmes instigated by individual companies and/or industry associations. Many of the recent corporate social responsibility (CSR) activities undertaken by large companies such as Shell would fall into this category.

Policy Instruments: A Simple Typology

Figure 1 provides a very simple typology of the main types of environmental policy instrument delineated on the basis of who, or what, determines the ends and means of policy. It focuses on their theoretical, 'textbook' characteristics rather than their actual use 'in context'. But even so, it does reveal both the extensive overlap between the main sub-types of NEPI and, by implication, some of the potential difficulties of clearly distinguishing government from governance. For instance, forms of regulation are found in three of the four cells (i.e. in some respects regulation is used in a hierarchical fashion, but in almost all states at least some issues are normally negotiated between the regulator and the regulated). The definitions of instrument sub-types are also not discrete. For instance, we have already noted that many EMSs could be defined as public voluntary schemes (i.e. voluntary agreements).

⁴ Among our cases, only the EU eco-label scheme was set up under public law. All other schemes were set up under private law.

Figure 1: A Simple Typology of Instrument Types

	The state specifies the goal to be achieved	The state does not specify the goals to be achieved
The state specifies how the goal is to be achieved	Regulation (e.g. linking an emission target to the use of a certain type of technology);fiscal incentives e.g. tax reductions for a less polluting technologies)	Technology-based regulatory standards (e.g. BAT)
Non-state actors specify how the goal is to be achieved	Most negotiated VAs; some MBIs; some regulation (e.g. EQOs)	EMSs; most MBIs; some VAs; eco-labels

Source: based on Russell and Powell (1996).

It should already be apparent to the reader that government and governance (at least as the existing literature defines them) are actually much more entwined than is implied by some theorists. In fact, on closer examination, the extent of the blurring between the two categories is even more substantial than is implied in Figure 1. At its heart, the governance debate is really about where society is steered from. Thus, under a 'government' approach, society is steered from the centre by the state, whereas in a 'governance' model, 'society actually does more self-steering rather than depending upon guidance from government' (Peters 2000: 36). Figure 2 re-casts the contents of Figure 1 into the language of governance and government.

Figure 2: A Simple Typology of Governance Types

	Government determines societal goals (ends)	Society determines societal goals (ends)
Government selects the means of policy	GOVERNMENT: hierarchical steering	HYBRID TYPES
Society selects the means of policy	HYBRID TYPES	GOVERNANCE: society is 'self organising'

Both Figure 1 and 2 identify two important functions that need to be fulfilled when instruments are used: the determination of the *means* of policy (i.e. the 'rowing') and the determination of the *ends* to be achieved (i.e. the 'steering'). To suggest that there is a governance transition, does not necessarily imply that both these functions are changing at the same time. In general, 'government' is found in the top left cell of Figure 2 and the further we travel towards the bottom right cell the more important societal 'self-steering' (i.e. governance) becomes. Many scholars of governance claim that society is undergoing just such a shift from hierarchical government structures to public-private partnerships that facilitate greater "ecological self organization" (e.g. Teubner *et al.* 1994).

On closer inspection, government actually features in all four cells. It also has some role to play in relation to all four instrument types. So, to take VAs as an example, only unilateral commitments are actually instruments of 'self organising' governance, because they offer businesses an entirely voluntary means of communicating with their stakeholders. Negotiated agreements normally involve so much state activity that they actually sit closer to the government end of the government to governance continuum. Similarly, some EMSs involve, or are closely allied to, regulation, whereas others do not. Eco-labels are commonly regarded as relatively unintrusive policy instruments, but in reality only Type II schemes formally constitute 'self organising' governance. The other two sub types involve the state acting as a supporter, a verifier or a

referee of the labelling system. Finally, neither eco-taxes nor tradable permits are devoid of government involvement. Far from it, government is commonly involved in designing, initiating and overseeing them. In short, they are not entirely 'self organising' either.

So far, we have not looked in detail at how these four types of instruments are actually used in the nine jurisdictions, less still the interaction between them. But it is already clear that the neat theoretical distinction between governance and government is, in reality, rather blurred, even when the empirical focus is on something as seemingly clear cut as policy instruments. In the next section, we offer a more detailed assessment of the temporal, spatial and sectoral patterns of NEPI use in order better to analyse the nature and extent of that blurring, as well as understand the interactions *between* governance and governance.

Instruments of Environmental Governance: Patterns of Use

Table 1 provides a summary of the distribution of NEPIs across the eight countries in our sample and the EU. Rather than populate the cells with numbers,⁵ we have decided instead to offer a more qualitative weighting. The descriptors indicate the popularity of a given instrument in each jurisdiction relative to the other eight jurisdictions, rather than to some absolute baseline. In other words, they allow comparisons to be made between the jurisdictions within each column, rather than the other way round.

⁵ This is actually not terribly meaningful for our purposes, as countries collect data using different definitions of a particular instrument (see text for details). Simple, quantitative measures may therefore obscure more than they reveal (e.g. with eco-labels does one count the number of labels or the total number of products/service groups within a particular scheme?), hence our more disaggregated, qualitative approach.

Table 1: The Distribution of NEPIs in the Nine Jurisdictions, c. 2000

	<i>Ecotaxes</i>	<i>Tradable permits</i>	<i>Voluntary agreements</i>	<i>Eco-labels</i>	<i>Environmental management systems</i>
<i>Australia</i>	Low	Low	Low	Low	Medium
<i>Austria</i>	Medium	Low	Medium	Medium	High
<i>Finland</i>	High	Low	Medium	High	High
<i>France</i>	Medium	Low	Low	Low	Low
<i>Germany</i>	Medium	Low	High	High	High
<i>Ireland</i>	Low	Low	Low/medium	Low	Medium
<i>Netherlands</i>	High	Medium/High	High	Low	Medium
<i>The UK</i>	Medium	High	Low/Medium	Low	Low/Medium
<i>The EU</i>	Low	Low/medium	Medium	Medium	Medium

Three things are immediately apparent. The first is that all nine jurisdictions have adopted at least one form of NEPI. To that extent, governance has become more dominant. Thirty years ago only a small number of countries had adopted NEPIs, while the majority relied upon regulation. Today, even the least innovative and environmentally ambitious countries (in our sample – Ireland and Australia) have some NEPIs in place, although regulation remains important in all nine jurisdictions. Second, although NEPIs are everywhere more popular, they are more popular in some jurisdictions (e.g. the Netherlands, Germany and Finland) than others (e.g. Austria, Australia and Ireland). There are, as we explain below, also important cross-sectoral variations. Third, no jurisdiction is enthusiastic about all the new instruments; even ‘lead’ states have shunned certain types of new instrument (e.g. tradable

permits in Germany and Finland; eco-labels in the Netherlands; eco-taxes in the EU). Furthermore, some countries are extremely enthusiastic about particular type of NEPI (e.g. tradable permits in the UK; EMSs in Australia), but relatively uninterested in other sub-types.

In short, just as there were enduring differences in the way that 'old' instruments (i.e. regulation) was applied in the past (e.g. Vogel 1986), there appear to be subtle but important differences in the way that NEPIs are being utilised today. The next section therefore looks in even more detail at precisely how the nine jurisdictions use each individual instruments, to see if that offers a better insight into the interaction between the government and governance of instruments (i.e. is it one of co-existence, fusion, competition or replacement?).

Market-Based Instruments

The Nordic countries, the Netherlands and France introduced charges and levies on water and air pollution as early as the mid-1970s. Germany adopted a wastewater levy in 1978, but this was not fully implemented until the early 1980s. By contrast, the UK did not adopt environmental taxes until the early 1990s, Australia is an even more recent convert and Ireland has barely started.

In general, the 'followers' are now beginning to catch up with the initial pioneers as MBIs are more widely applied (EEA 2000). However, the gap between the wealthier Northern and poorer European countries persists and, on some criteria, may even be growing (CEC 2000). Thus, the pioneers have now moved on to more sophisticated ecological tax reforms, whereas the followers have still not made much progress with the first generation MBIs such as simple effluent taxes and user charges.

The range of MBIs used has also evolved. In the 1970s, cost recovery charges dominated, but in the 1990s policy makers began to experiment with 'second generation' approaches involving hypothecation (CEC 2000: 16). In our sample, Austria (e.g. landfill taxes), Finland (e.g. the oil waste levy), Germany (e.g. the duty on mineral oils) and the UK (e.g. the landfill tax) formally

' earmark' the revenue from environmental taxes to environmental or other 'good' causes. Environmental tax reform is the most sophisticated form of MBI currently deployed in the nine jurisdictions. But here again, there are clear leaders (the Netherlands, Finland, France, Germany and the UK all adopted significant programmes in the late 1990s) and followers (Australia, Austria and especially Ireland). Tradable permits were originally developed in the USA and are still relatively uncommon in the EU. In our sample, only the UK and the Netherlands have successfully adopted them, although all the member states are now responding to an EU permitting scheme covering greenhouse gases (see below).

Finally, the overall pattern of use is highly differentiated across the various sub-sectors of environmental policy. Thus, some sub-sectors, such as fuels, road transport, energy consumption and waste are relatively well covered by MBIs, whereas the agricultural sector is hardly touched at all, although at one stage Austria did adopt a fertilizer tax (CEC 2000: 12). In Europe, eco-taxes are now commonly used across a large swathe of different sectors (although the aforementioned sectors are covered more extensively than others), whereas tradable permits have so been largely limited to reducing greenhouse gas emissions (OECD 2001).

Eco-Labels

The German government adopted the world's first national eco-label scheme in 1978. Austria (1991), Australia (1992), France (1992), and the Netherlands (1992) eventually followed by adopting their own schemes. Ireland and the UK are the only states that rely upon the EU's eco-label scheme, which has a very low profile among most producers and consumers in the EU. By 2000, only 41 EU eco-labels had been awarded across all 15 Member States, in stark contrast to the 4,000 or so national eco-labels issued under the German national scheme. The French, Dutch and, to a lesser degree, the Austrian schemes, all suffer from a relatively low rate of take up.

As with VAs, each eco-label scheme has its own peculiar national characteristics. Thus, the Austrian, Dutch, French and the Nordic White Swan label all place relatively much greater emphasis on lifecycle analysis than the German scheme. They even address different issues, depending on what is regarded as locally important. Thus, Austria pioneered an eco-label for tourism; the Netherlands was the first to award eco-labels to the food sector and flower growing; Finland regards forest certification as an important issue; and Australia emphasises energy labelling. There are also important sectoral variations. For a long time, eco-labels were awarded only to products (e.g. less energy consuming light bulbs). More recently, some services (e.g. car sharing and eco-friendly tourism) have also been awarded eco-labels. Most eco-labels are to be found on relatively inexpensive household products (e.g. recycled toilet paper). Very few labels have yet been awarded to producers of white goods (e.g. washing machines and fridges), cars or household electrical equipment.

Environmental Management Systems

By contrast with the previous three sub-types, environmental auditing was initially 'self organised' by industry. It first developed in the USA, primarily as an internal management tool, but gradually public bodies began to adopt it as an instrument of public policy. The EU's EMAS scheme was established in 1993; the ISO 14001 scheme three years later in 1996. However, as originally designed, the two schemes were somewhat different (the common perception is still that ISO 14001 is less demanding (Golub 1998: 18)). In 2001, the European Commission re-launched the EMAS scheme to make it more compatible with the ISO's scheme, while preserving its superior environmental credentials. The Commission had become increasingly concerned that European companies were shunning EMAS for the more globally recognised ISO standard.

Table 2: EMAS and ISO 14001 registrations/certifications by country

	EMAS Registrations¹	EMAS registration per million population	ISO 14001 certifications²	ISO 14001 certifications per million population
Australia	n/a	n/a	1,485	82.5
Austria	310	38.5	301	37.4
Finland	41	8.0	750	146.5
France	24	0.4	1,666	28.5
Germany	2,414	29.5	3,700	45.2
Ireland	8	2.2	170	47.0
Netherlands	27	1.7	1,073	69.2
UK	78	1.3	2,917	49.8
The EU	3,695	1.00	19,998	54.5

Notes: ¹As of May 2003; ²As of December 2002; Based on: ENDS (2003, 21)

These differences are reflected in the relative patterns of adoption (see Table 2). Austria and Germany completely dominate the EMAS scheme, having registered around 70% of all the registered sites. Germany and Austria also dominate the league table of ISO 14001 certifications in the EU, but there are a number of other countries where certification is popular. Currently, the total number of EU registrations under the EMAS scheme is just under 3700, as opposed to nearly 20,000 certifications under ISO 14001. In effect, a pronounced (although by no means uniform) shift is underway in Europe from a soft 'new' instrument (EMAS) to an even softer and even 'newer' instrument, namely ISO 14001. As with the other three types of NEPI, the way in which EMSs are interpreted and applied is also intrinsically different. For instance, some countries offer government incentives to firms that adopt an EMS and some do not. Germany even offers a greater incentive to those firms that join EMAS in preference to the ISO 14001 scheme (Clausen *et al.* 2002).

Voluntary Agreements

Every EU state has adopted at least one VA, but the vast majority are still to be found in the Netherlands and Germany. By 2002, these two had adopted more than 230 between them. Most VAs are non binding and voluntary, but some states are now experimenting with more formal and binding forms (i.e. negotiated agreements). The same pattern of leaders and followers is also

apparent with respect to VAs: in this case France, Germany and the Netherlands pioneered their use, with the rest following.

The intrinsic nature of VAs also varies quite significantly across the nine jurisdictions. In the Netherlands, VAs supplement regulation rather than being an alternative to it (i.e. *co-existence*). Since the mid-1990s, most Dutch VAs have been adopted in the form of legal contracts or 'covenants'. In Germany, VAs are non binding, but they are often negotiated 'in the shadow of the law' i.e. proposed by industry as a means to pre-empt regulation (i.e. *competition*). In Austria, which has a relatively lower number of VAs (all of which are non binding for constitutional reasons), a similar pattern can be observed. In France and Ireland, roughly half of the VAs are binding. VAs are not very common in the UK. Those that exist, tend to be non binding and flexible. Recently, however, the UK has pioneered the use of policy instrument packages (i.e. *fusion*) that explicitly combine MBIs with VAs, regulation and a tax (Smith, 2004). Finally, the sectoral focus of VAs is also very uneven: most are to be found in the energy/climate change, chemicals and waste sectors, with very few in the agricultural, transport and tourism sectors.

Regulation

Amid all the 'frenzy' surrounding the discussion of governance (Eberlein and Kerwer 2004: 125), regulation remains the most widely used instrument of environmental policy, in spite of repeated political promises to afford a higher priority to VAs and MBIs. In other words, there has been no wholesale switch to NEPIs, less still a significant, long term process of de-regulation (i.e. *replacement*) either at the EU or the member state level (Armstrong 2000; Hèritier 2002b). We explore the reasons for this more fully below, but three points are worth making here. First, regulation often serves an important support function (i.e. *co-existence*) that cannot be easily performed by other tools. For example, regulations are often used to implement NEPIs, set the rules governing their operation and penalise defectors (see OECD 2001). Second, in some countries (most notably Austria, Finland and Germany), the public strongly supports the use of regulation to counter point sources of

pollution. In what is in effect a political *competition* between different instruments, regulation appears possess several highly-prized attributes (see above). Consequently, instead of replacing regulation, NEPIs are more likely to be used to address a set of more specific, *new* tasks. These include: filling in the 'cracks' in the regulatory system (e.g. VAs) (i.e. *co-existence*); dealing with emerging issues such as climate change (e.g. tradable permits) that are not heavily regulated (i.e. *co-existence*); or dealing with issues that are not suited to a regulatory approach (e.g. sustainable consumption etc.).

Finally, the EU is now the dominant driver of national environmental policy development in Western Europe but its influence over national instrument selection and adoption remains curiously weak. For reasons discussed more fully below, it mostly attempts to steer society by issuing regulations, which its Member States are compelled to transpose into their own national legal systems. As most national environmental policy goals are now determined in the EU, this inevitably means that the EU remains the pre-eminent source of new environmental policy instruments. As long as the EU continues to rely heavily upon regulation, the scope for NEPI use at the member state level will be externally constrained.

Has Governance Eclipsed Government?

In this paper, we have tried to show that the overall pattern of instrument use is strongly differentiated by country and by sector (as well as over time). The total number and diversity of NEPIs used in the eight countries and the EU has grown significantly, with environmental taxes, VAs and eco-labels proving especially popular. However, no single type of NEPI is overwhelmingly popular across all nine jurisdictions. In fact, some types of MBI (e.g. tradable permits) have only recently been deployed, while some 'old' policy instruments (e.g. subsidies) remain (though they are increasingly discredited as policy tools). In some countries, the adoption of NEPIs has been stunningly fast, whereas in others, NEPIs are either being adopted much less quickly (e.g. Australia

(except ISO 14001) and Austria (except EMAS and ISO 14001)), or barely at all (e.g. Ireland for all subtypes apart from ISO 14001).

One obvious conclusion to draw from these findings is that governance is undoubtedly more important than it was in 1970, but that government remains – and will probably continue to remain – dominant. If NEPI adoption is employed as a simple touchstone of governance, then clearly there has been no wholesale and spatially uniform shift from government to governance across our nine jurisdictions. Crucially, most of our cases could be placed somewhere along the continuum of governing types described above, rather than at the extreme ends. As these spatial and temporal variations are not adequately explored in the existing, mostly theoretical, literature on governance, they are worthy of much closer empirical investigation and theoretical interpretation.

The Resilience of Regulation

The paucity of some types of NEPI can be partially accounted for by national-level factors, such as political opposition from industry, the absence of effective political champions support or fears of declining economic competitiveness (Golub 1998; OECD 2001). These obstacles notwithstanding, analysts must still account for the surprising resilience of regulation across all nine jurisdictions. One obvious explanation is that regulation is often very hard to eliminate once it is in place. To borrow a historical institutional term, it becomes ‘locked in’ to societies as actors adjust their behaviour and expectations around it. Environmental groups in particular believe that regulation morally penalises polluters in a way that tradable permits and some voluntary agreements (both are sometimes crudely depicted as ‘licences to pollute’) appear not to do. Our research suggests that NEPIs (i.e. governance) are not replacing regulations (i.e. government) (i.e. *replacement*). Rather, NEPIs are much more likely to be used to plug gaps in national protection systems or to respond to urgent new problems such as climate change. After thirty or more years of environmental regulation, there are not many gaps in national policy systems to fill with new instruments. More often than not, they *co-exist* or are *fused* with regulation.

Second, regulation (and government more generally) often provide(s) an important support function for NEPIs (i.e. *co-existence*). Among other things, it often provides formal authority to the agency tasked with designing and implementing a NEPI, and establishes the rules governing its operation. For example, the EU's EMAS system, while voluntary, still requires member states to take various actions, such as creating an accreditation system for independent verifiers as well as appointing a certification body to maintain an inventory of certified sites.

A third explanation is that many environmental policy makers are, in Herbert Simon's apt phrase, as likely to be satisficers as utility maximisers. That is to say, while they recognise that regulation is imperfect, many still regard the case for adopting certain types of NEPI as largely unproven. When many continental European countries want to address pressing and highly visible environmental threats, they still rely heavily on regulation. Their suspicions about NEPIs will doubtless have been confirmed by a recent OECD analysis (OECD 2003), which concluded that the environmental effectiveness of some VAs is highly questionable. Tradable permitting is currently creating much interest in Europe, but it will only be put fully to the test when the EU's greenhouse gas scheme commences in 2005.

The EU's Role

The EU's role in facilitating and/or retarding the shift to NEPIs (and hence governance) is rather more difficult to decipher. Although we have only considered one broadly comparable non-member state (i.e. Australia), a cursory inspection of Table 1 does suggest that EU member states exhibit higher levels of NEPI adoption than non-European states. Crucially, however, the inclusion of the USA, which is widely perceived as having adopted the highest number of tradable permits worldwide (OECD 2001) would not have radically altered the overall picture because eco-taxes, VAs and eco-labels are much widely used in many (North) European states. However, there are still some member states (e.g. Ireland) with a similarly low uptake. Moreover, the EU itself is not the primary cause of the higher levels of NEPI use in Europe.

We have already noted that regulation remains the mainstay of EU environmental policy in spite of substantial, though differential, uptake of NEPIs at the national level. Why is this? Apart from the many questions raised about their transparency and legitimacy, VAs are often technically complex to negotiate across borders, especially when well established large industry associations are absent (i.e. it is telling that the first EU VAs target the chemical and car industries and not retailing for example). Moreover, NEPIs may also experience potentially serious implementation problems (i.e. how can free-riders be made to comply with voluntary measures?). Meanwhile, several states (initially the UK and more recently Ireland and Spain) have sought consistently to block the Commission's ability to innovate with environmental taxation which, unlike most aspects of EU environmental policy, still falls under the unanimity rule. In fact the EU's reliance on regulation is so deeply rooted that it has to implement many of its NEPIs (such as the eco-labelling, emissions trading and EMAS schemes) using Directives and Regulations (i.e. traditional forms of regulation). So, far from being a case of 'new governance' (Hix 1998), the EU's experience with NEPIs underlines just how strongly constrained it is by member state (i.e. government) preferences.

Conclusions

It is a truism that governance and government are not fixed entities, but two poles on a continuum of different governing types. By adopting a narrow empirical focus on policy instruments, we have shed new light on what is occurring between the two poles. Very broadly speaking, our nine jurisdictions have, on balance, shifted from a position of 'government' to one of 'governance' as regards their use of NEPIs. However, the total distance travelled along the continuum has been surprisingly modest, and is spatially and temporally as well as sectorally uneven. Detailed empirical research successfully reveals that very few of the jurisdictions actually started from a position of 'strong' government, because 'new' instruments were already popular in some of the states as far back as the 1970s. Then again, none of the jurisdictions has yet shifted anywhere near to a position of 'strong' governance in which NEPI use is essentially 'self-organising.'

By looking at the way in which policy instruments are actually being used 'in context', we have been able to produce a much more finely grained empirical assessment of the precise patterns of change and interaction. Our study has shown that in spite of the political rhetoric about finding less direct forms of state involvement, governments find themselves drawn inexorably into the detailed process of designing, adopting and implementing *all* environmental policy instruments, however supposedly 'soft' and 'new'. The four categories of interaction noted above help to place different jurisdictions on the continuum of governing types. On balance, *co-existence* appears to be the most dominant, although there is some incipient *fusion* (e.g. the UK's policy packages) and *competition* (e.g. business generally prefers VAs to eco-taxes and tradable permits in Austria and Germany, while for environmental groups the opposite is true). *Replacement* is conspicuous by its absence from most of the nine jurisdictions despite an overall increase of NEPIs. This raises interesting questions about the long term resilience of regulation. Moreover, there is also a considerable degree of *competition* between different types of NEPIs (e.g. VAs and eco-taxes) as well as between 'old' instruments (i.e. regulation) and NEPIs (e.g. VAs).

Before we conclude that governance (as defined above) is weak while government remains relatively strong, three complicating factors should perhaps be aired. First, although regulation remains important, it is nonetheless being used in new ways i.e. governance can emerge *within* government (i.e. a variant of *fusion*). Some authors refer to the development of complementary combinations of different instruments as 'smart regulation' (Gunningham and Grabosky 1998). Thus in Australia, regulation is becoming more 'light handed', 'new approaches' are being trialled in the EU, and in Finland regulation increasingly serves a 'support function'.

Secondly, much hangs on how governance is defined. We have relied upon a relatively narrowly drawn definition which commands widespread agreement among scholars of governance. However, it is worth noting the existence of a sub-literature that questions the association between government and regulation posited by some governance theorists. Majone (1996), for example,

argues persuasively that some of the most important drivers of governance, namely privatisation and new public management, actively require *more*, not less regulation. In other words, governance may generate a need for new government. We have identified some examples of this and defined it as *fusion* in the analysis above. There is one other important point that should be made about the EU's use of softer policy instruments. Héritier (2002a), for example, suggests that they are used when the EU's competence to act is contested or weak i.e. they are not necessarily an end-point but often the first step on the road to regulation. Our own research suggests that while policy instruments provide a neat empirical focus for guiding comparative research, it should not be used dogmatically, but rather as a sensitising device, especially in fluid, unconventional policy settings such as the EU.

Finally, our focus on instruments illuminates some interesting temporal, spatial and sectoral patterns of change that have not yet excited the interest of governance scholars. For example, government (as we have defined it) may never have been as prominent in some continental European states as the Anglo-American dominated literature on governance implies. In fact, our research confirms that governance has been around for a good deal longer: there are several prominent examples of 'self-organisation' to be found in some jurisdictions in the 1970s. The less hierarchical exchange relationships associated with some VAs, are a long-standing feature of Dutch, French, German and Austrian environmental policy systems. The broader point we wish to make is that scholars should not automatically assume that governance is always 'new' or that it succeeds government. 'The governance perspective.... *is date and place specific*' (Stoker 1998: 26) (emphasis added).

To conclude, a tightly defined empirical analysis of policy instrument use suggests that governance has not uniformly or comprehensively eclipsed government. In seeking better to understand the subtle intermingling of governance and government, we have identified instances where governance has emerged within government, and when governance actually requires new forms of government. We also suggest that government may never have been that dominant anyway in some jurisdictions. Nevertheless, the term governance

is worth retaining, even though it lacks a commonly agreed definition. In this paper, we have explored the governance transition through the prism of instrument use in nine jurisdictions. We hope that the some of the puzzling findings that we have unearthed will inspire others to engage in a more empirically informed debate about the causes and consequences of governance.

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